IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO : 1824 of 2003

Writ Appeal under Clause 15 of the Letters Patent against the Order dated 17/07/2003 in WP NO : 12410 OF 1992 on the file of the High Court.

Between:

The General Manager, The Co-operative Central Bank Limited, Vizianagaram.

..... APPELLANT

AND

1 Labour Court-cum-Industrial Tribunal, Rep. by its Presiding Officer, Visakhapatnam.
2 I.S. Srinivas, S/o. not known, O/o. The Co-operative Central Bank Ltd., Vizianagaram.

...RESPONDENTS

Counsel for the Appellant: MR.K.SRINIVASAMURTHY

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR.A.SRINIVASA SARMA

WRIT APPEAL NO : 174 of 2005

Writ Appeal under Clause 15 of the Letters Patent against the Order dated 17/07/2003 in WP NO : 12410 OF 1992 on the file of the High Court.

Between:

I.S.Srinivas, S/o Late IVR Murthy,

25-10-15, Dasannapeta, Ayyakoneru North Bund, Vizianagaram.

..... APPELLANT

AND

1 The Chairman & Presiding Officer, Industrial Tribunal cum Labour Court, Visakhapatnam.
2 The Cooperative Central Bank Limited, Vizianagaram, rep.by its General Manager, Vizianagaram.

.....RESPONDENTS

Counsel for the Appellant: MR.A.SRINIVASA SARMA

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR. K.SRINIVASAMURTHY

The Court made the following:

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

W.A.No.1824 of 2003 and 174 of 2005

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Common Judgment: (Per Sri GHULAM MOHAMMED, J)

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Since both the Writ Appeals are directed against the order dated 17-7-2003 passed in Writ Petition No.12410 of 1992 by the learned single Judge of this court, they are clubbed, heard together and are being disposed of by this order.

The appellant in Writ Appeal No.1824 of 2003 is the respondent-Bank; and the appellant in Writ Appeal No.174 of 2005 is the writ petitioner- claimant workman who initially raised an Industrial Dispute before the 1st respondent-Industrial Tribunal, inter alia, contending that the respondent-Bank had retrenched him without issuing any notice or reasons. The 1st respondent-Industrial Tribunal on consideration of the evidence dismissed the said I.D., against which the writ petitioner carried the matter by way of instant Writ Petition No.12140 of 1992 before this Court.

A learned single Judge of this court considering the facts and circumstances of the case, and the entire evidence that was made available on record, allowed the writ petition setting aside the award of the Industrial Tribunal and directed the respondent-bank to reinstate the writ petitioner into service as in the same place as he was working at the time of retrenchment, with continuity of service, but without back wages.

Questioning the said order of reinstatement of services of the writ petitioner the respondent-Bank has preferred the Writ Appeal No.1824 of 2003 challenging the order of the single Judge on various grounds. The writ petitioner also preferred W.A.No.174 of 2005 contending that consequential relief of back wages would follow when once the retrenchment found to be illegal.

The main contention of Sri K. Srinivasa Murthy, learned senior counsel appearing for the respondent-bank is that the burden of proof as to completion of 240 days of continuous work in a year is on the claimant-workman and a mere statement in this regard on the part of the workman cannot be regarded as sufficient evidence. He also

contended that the learned single Judge upon arriving at the conclusion that the Industrial Tribunal has passed its Award without appreciating evidence available on record, ought to have remanded the matter back to the Industrial Tribunal to consider the evidence on proper perspective. In support of his contentions, the learned counsel has relied on the judgments of the Apex Court reported in RAJASTAN STATE GANGANAGAR S. MILLS LTD v. STATE OF RAJASTAN , ESSEN DEINKI v. RAJIV KUMAR. The Apex Court in these decisions held that burden of proving continuous services of 240 days lies on the employee only. Learned senior counsel also relied on the decision of the Apex Court reported in EMPLOYERS, MANAGEMENT OF CENTRAL P & G INST. LTD v. UNION OF INDIA AND ANOTHER wherein it was held by the Apex Court that, “it is not always mandatory for the courts to order reinstatement in cases where there has been violation of section 25F of the Industrial Disputes Act in not paying retrenchment compensation at the time of termination of service of a work-person having completed 240 days service and as such it can be substituted for good reasons by awarding compensation”.

On the other hand, learned counsel appearing for the writ petitioner contended that the learned single Judge ought to have granted back-wages having held that the retrenchment itself is vitiated and illegal. Learned counsel in support of his contention relied on the decision reported in H.D. SINGH v. RESERVE BANK OF INDIA, wherein the Apex Court held that, striking off the name of a workman from the rolls by the employer amounts to ‘termination of service’ and such termination is retrenchment within the meaning of S.2(OO) if effect in violation of the mandatory provisions contained in Section 25-F, and is invalid.

The appointment order issued to the writ petitioner is dated 9.8.1983. It is stated in the said order that the writ petitioner was engaged as an assistant to work in the reconciliation cell in the co-operative Central Bank Limited, constituted to reconcile the Branch accounts with central office of the Vizianagaram Co-operative Central. The

employment shall come to an end by 31st December, 1983 by which time the reconciliation work is expected to be completed. It is stated that the office in-charge of the bifurcation cell also issued a certificate Ex.W.1 dated 26-10-1984 stating that the writ petitioner is graduate and passed type writing and worked in the cell. The writ petitioner has been retrenched from service with effect from 31.3.1987. In support of his claim, the writ petitioner examined himself as WW1 and marked Exs.W.1 service certificate and Ex.W.2-appointment order given by the respondent-bank and thus the writ petitioner discharged his initial burden that he in fact worked for more than 240 days in the year preceding his termination.

As against the said evidence, except a blunt denial in the counter no evidence, worth inspiring the confidence of the court, was adduced by the respondent-bank to contend that the writ petitioner had not in fact worked for 240 days. The stand of the respondent-Bank in the counter was that the writ petitioner was neither appointed on 6.9.1983 nor terminated on 31.3.1987 and that the writ petitioner was only engaged as daily rated workman at the rate of Rs.20/- per day as contingent worker whenever there was contingency of work in the bank. Though the appointment order dated 8.9.1983 was produced by the writ petitioner stating that he was appointed as Assistant in the respondent-bank on a monthly remuneration of Rs.500/-, the respondent-bank has denied in the rejoinder (counter) and also in the depositions stating that the writ petitioner was neither appointed nor terminated on 31.3.1987. Curiously, the General Manager of the respondent-bank who was examined as MW1, categorically admitted in his evidence that the petitioner was worked in the respondent-organization from 8.9.1983 to 31.3.1987 with intermittent brakes. The respondent-Bank though maintained that the writ petitioner worked for 118 days only during those four years, no records were maintained by them. This being the factual position, the contention of Sri K. Srinivasa Murthy, learned counsel for the respondent-Bank that burden is on the writ petitioner-claimant to prove completion of 240 days of continuous work merits no consideration. When the

respondent-bank itself is not able to discharge its burden in the light of the evidence produced by the writ petitioner, particularly Ex.W.2 the appointment letter, and in view of deposition of MW1- General Manager of the respondent-Bank, and also Exs.M1, M2, M3 and M4 which are the circular instructions issued by the respondent-bank to terminate the services of those employees who were appointed under daily wages in any category, the learned single Judge came to a right conclusion that the procedure adopted by the authorities of the respondent-bank are not fair and truthful and therefore dis-belived their version that the writ petitioner has not worked on a monthly remuneration of Rs.500/- initially and after Rs.520/-. The learned single Judge considering the entire evidence that was made available on record observed that when the writ petitioner worked for four years, it would be difficult to believe the version of the respondent-bank that he has not worked for a period of 240 days in one calender year. The learned single Judge therefore set aside the order of the Tribunal holding that retrenchment of the writ petitioner is illegal and consequently ordered for reinstatement of the writ petitioner into service with continuity of service, but without back wages, as the writ petitioner-claimant was out of service during the relevant period.

That apart the relief sought for the writ petitioner with regard to granting of back wages also does not arise inasmuch as he was out of service during the relevant and therefore the principle of no work no pay squarely applies.

On perusal of the entire material on record, we are of the view that the order of the learned single Judge is just and proper and does not warrant any interference by this court. Accordingly, both the writ appeals are meritless and are dismissed. No costs.

JUSTICE CHELAMESWAR, J

JUSTICE GHULAM MOHAMMED, J.

Dated: 11-3-2005

Kk/nrg

To

1 Labour Court-cum-Industrial Tribunal, Rep. by its Presiding Officer, Visakhapatnam.
2. The General Manager, The Co-operative Central Bank Limited, Vizianagaram.

3. 2 CCs to G.P. for Labour, High court Buildings, Hyderabad (OUT)

4. 2 CD copies.

*Form-NIC-OGS/WA {**VSR**}*